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HOUSE BILL 1942 By  
Scroggs

SENATE BILL 1918  
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4;  
Title 13, Chapter 5; Title 49 and Title 67 and to enact the  
"Tax Reform and Governmental Accountability Act of  
2001."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding  
Section 2 as a new part.

SECTION 2.

67-4-2201. This act shall be known and may be cited as the "Service Industry  
Business Privilege Tax Act of 2001."

67-4-2202. As used in this part:

(1) "Commissioner" means the commissioner of revenue;

(2) "Department" means the department of revenue;

(3)

(A) "Gross Revenue," "Total Gross Revenue," "Revenue,"  
and "Total Revenue" shall mean any and all amounts, receipts,  
credits, property or consideration that are received, derived, billed

or due by contract or otherwise, for the performance of any taxable service.

(B) Gross revenue shall include the entire charge, or charges, made for taxable services, including incidental services, other incidental work, or incidental tangible personal property used to provide the taxable service, even though such charges may be stated separately from the charge for the taxable services. Such revenue, whether valued or paid in money, or otherwise, shall include any deductions authorized by any other law but not authorized by this part.

(C) The failure of a taxpayer to separately state charges for items that are not incidental to the sale of the taxable service performed shall cause all such charges to be subjected to the tax levied by this part.

(D) Gross revenue shall also include the value of any rebates received by a customer and assigned by the customer to the taxpayer to apply to the purchase price of taxable services, or amounts received by a taxpayer from any source as the result of any particular sale of taxable services.

(E) Except as provided in subitem (F)(ii), gross revenue shall also include revenue from government contracts or programs or payments from non-profit entities.

(F) Gross revenue shall not include the following:

(i) Receipts that are the basis for tax levied under the provisions of Title 67, Chapter 6;

(ii) Payments received by health care providers pursuant to TennCare or any successor to TennCare under Title 71, Chapter 5;

(iii) Amounts received from an affiliated entity for services performed exclusively for the affiliated entity. For purposes of this subitem, entities are affiliated if either entity, directly or indirectly, wholly owns the other, or if both entities are wholly owned, directly or indirectly, by a common parent; and

(iv) Amounts paid to subcontractors or materialmen in the ordinary course of business and not for the purpose of avoiding the tax levied under this part.

(4) "Internal Revenue Code" means Title 26 of the United States Code in effect during the month in which gross revenue is determined under this part;

(5) "Not-for-profit" means any person described in Sections 401, 408, 408A, 409, 501, 526, 527, 528, 529, or 530 of the Internal Revenue Code, as amended.

(6) "Service industry business" means any for profit or not-for-profit joint venture, corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state chartered or national bank, state or federally chartered savings and loan association, insurance company regulated under Title 56, and any other business

organization or entity that is performing any part of a taxable service in Tennessee that does not qualify for an "m" number under Title 67, chapter 6; provided, that any officer, director, principal, shareholder, employee, partner or member of a service industry business subject to the tax levied by this part shall not be subject to the services gross receipts tax except as provided in Section 67-4-2210(a). "Service industry business" does not mean individuals, sole proprietorships, or general partnerships.

67-4-2203.

(a) The tax herein levied is for state purposes only and no county or municipality or taxing district shall have power to levy any like tax; provided, however, that nothing in this part shall be construed or interpreted to repeal or to affect any tax now in effect.

(b) The tax shall be levied upon, and collectible from, the service industry business engaging in a taxable business activity. The tax herein levied upon service industry businesses shall not be construed as a tax upon the purchasers or customers. If a taxpayer lists service business gross revenue tax as a separate charge to the customer, such charge shall be added to the total gross receipts subject to tax under this part.

(c) Nothing in this part shall amend or affect the application of the tax levied under Title 67, Chapter 6, and payment of the tax levied by this part on any gross revenue shall not be a basis for an exemption from sales and use taxes.

67-4-2204.

(a) The supervision and collection of the tax levied by this part shall be under the direction of the commissioner, and the commissioner has the authority

and power to prescribe forms upon which taxpayers liable for the tax shall make reports of the facts and information required to enable the commissioner to ascertain the correctness of the gross revenue tax reported and paid by such taxpayers. Failure of any taxpayer to secure such forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner herein provided.

(b) A single service industry business gross revenue tax return shall be filed by each legal entity subject to tax under this part, and the return shall include taxable gross revenue from all business locations of the one taxable business entity. Combined or consolidated service business gross revenue tax returns that include more than one (1) legal entity are not permitted.

(c) All service industry businesses subject to the tax levied by this part shall register with the department by completing and filing the registration information form prescribed by the department. Such form shall be filed with the department no later than October 1, 2001 or within fifteen (15) days after the date the person becomes subject to the tax, whichever date occurs last. No service industry business subject to the tax levied by this part shall provide services in this state unless and until it has registered with the department as provided herein; provided, that any taxable business entity that is in existence at the time this part becomes law may continue to provide services without registration until October 1, 2001, by which date it must have registered in order to continue providing such services. The fact that a taxable business entity has not registered shall not relieve it from filing service industry business gross revenue tax returns and paying the tax levied by this part.

67-4-2205.

(a) Any taxable service performed wholly or partly in Tennessee by a service industry business is hereby declared to be a taxable privilege subject to the tax levied by this part. Every service industry business now or hereafter performing in this state any part of a taxable service, as a recompense for the protection of its local activities and as compensation for the benefits it receives from performing such service in Tennessee, shall pay to the commissioner the tax levied by this part.

(b) The tax levied by this part shall apply to gross revenue for services performed on or after October 1, 2001. If any taxable gross revenue is for services performed partly before and partly after October 1, 2001, the amount of tax due with respect to such gross revenue shall be measured by the ratio that the time spent in performing such services after October 1, 2001, bears to the total time spent in performing such services.

(c) The tax levied by this part shall apply to taxpayers whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction and shall continue to accrue until such time as the taxpayer has been actually and legally dissolved or ceases to perform taxable services. Nothing in this provision shall be construed to conflict with federal bankruptcy law.

(d) In the event a taxpayer should fail to file a return, the tax imposed by this part shall be levied in the amount of the greater of fifty dollars (\$50.00) per month or the amount that would be due if the taxpayer had filed a return and the tax due had been computed in accordance with Section 67-4-2206.

67-4-2206. There is hereby imposed a tax on each service industry business for the period covered by the required business service gross revenue tax return as follows:

(a) One percent (1%) of gross revenue; and

(b) One percent (1%) of net revenue taxed at a rate of less than six percent (6%) under Title 67, Chapter 6, Part 2. For purposes of this subsection, "net revenue" means total gross revenue minus the product of (1) a fraction, the numerator of which is the rate of state sales and use tax applied to such revenue and the denominator of which is the rate provided in Section 67-6-202(a); and (2) total gross revenue.

(c) A credit shall be allowed against the tax imposed in subsections (a) and (b) in the amount of:

(1) The total tax paid by each service industry business under Title 67, Chapter 4, Parts 20 and 21;

(2) Premium taxes paid by any service industry business regulated under Title 56;

(3) Occupation tax paid under Title 67, Chapter 4, Part 17, including the sum of such taxes paid by service industry business on behalf of persons employed or otherwise affiliated with the service industry business; and

(4) Tax paid under Section 67-4-402.

67-4-2207. The tax herein levied shall be in addition to all other taxes, and no credit shall be allowed against the tax, except as provided in Section 67-4-2206(c); provided, that payments or charges refunded or credited to a customer, or any bad debt that the service industry business or its agent has been unable to collect after the exercise of diligent efforts, may be deducted from gross revenue reported on the service industry business's return for the tax period in which the refund, credit, or bad debt write-off occurred, but only to the extent that such refund, credit, or transaction resulting in a bad debt was included in gross revenue reported on a prior service business gross revenue tax return. Any payment for a properly determined bad debt that has been

deducted from taxable gross revenue reported on a return shall be added to gross revenue reported on the return filed for the period in which the payment was received. In no case shall any reduction in taxes occasioned by a deduction allowed by this section be refunded.

67-4-2208.

(a) Gross revenue from taxable services is subject to the tax levied by this part if:

(1) The service is performed wholly in Tennessee;

(2) The service is performed both inside and outside Tennessee, and the service performed outside Tennessee is incidental to the service performed in Tennessee; or

(3) The service is performed both inside and outside Tennessee, and the benefit of the service performed is received wholly in Tennessee.

(b) Notwithstanding the provisions of subsection (a), if the service is performed both inside and outside Tennessee and the benefit of the service is received both inside and outside Tennessee, the gross revenue subject to the tax levied by this part shall be measured by the ratio that the time spent in performing such service in Tennessee bears to the total time spent in performing such service everywhere.

67-4-2209.

(a) The tax levied under this part shall be due and payable monthly, and a service industry business shall file its service industry business gross revenue tax return with the commissioner on or before the twentieth (20<sup>th</sup>) day of the month immediately subsequent to the month covered by the return.

(b) The commissioner may require service industry businesses subject to the tax levied by this part to submit service industry business gross revenue tax



returns, related documents, and payments by electronic means. In addition to any other penalty provided by law, the commissioner may assess a five hundred dollar (\$500) penalty against any service industry business required to file returns and related documents or make payments by electronic means, for each instance of filing or making payment by any other means.

(c) Upon proper application by a service industry business on a form prescribed by the commissioner, the commissioner is authorized to permit quarterly filing and payment dates in those instances where the commissioner deems it to be in the best interest of the state to do so.

(d) For good cause, the commissioner may revoke an authorization previously granted to a service industry business under subsection (c); provided, that such revocation shall be prospective only.

67-4-2210.

(a) If a service industry business has liquidated, dissolved, gone out of business, or otherwise terminated and has refused or failed to pay the tax levied under this part, the commissioner shall collect the tax, together with any related penalty and interest, from any officer, stockholder, partner, member, principal, or employee who has received property belonging to the service industry business; provided, that such collection shall be limited to the value of the property received.

(b) The commissioner is empowered to certify to the secretary of state the name of any service industry business that fails or refuses to file any statement or return or to pay any fee or tax herein required; provided, that no certification shall be issued until such statement, return, or tax has remained delinquent for a period of more than ninety (90) days.

(c) At the time of such certification to the secretary of state, the commissioner shall give notice to the service industry business of the action taken. Thereupon, the charter or certificate of such service industry business or its domestication in Tennessee shall stand as automatically dissolved or revoked, and the secretary of state shall note such revocation or dissolution upon the secretary of state's records.

(d) At any time after the date of revocation or dissolution, such charter, certificate or domestication may be reinstated upon the filing of all service industry business gross revenue tax returns and the payment of all fees, taxes, interest and penalties due the state, provided that the title has not been taken by another business entity.

67-4-2211. All revenues received by the commissioner from the tax levied by this part and any related interest or penalties shall be deposited in the state's general fund.

67-4-2212.

(a) If any service industry business liable for any tax, interest or penalty levied hereunder shall sell out, quit, or cease its service business, such service industry business shall make a final return and payment of the taxes due within twenty (20) days after the date of selling, quitting or ceasing its business.

(b)

(1) The service industry business's successor, successors, or assigns, if any, shall withhold sufficient amounts of the purchase money to cover the amount of such taxes, interest and penalties due and unpaid until the former owner shall produce a certificate or receipt from the commissioner stating that all gross revenue taxes, interest and penalties due have been paid. If the purchaser of a service industry business fails

to withhold the purchase money as above provided, such purchaser shall be personally liable for the payment of the taxes, interest and penalties accruing and unpaid on account of the operation of the service industry business by any former owner, owners or assigns unless released by the department as hereinafter provided.

(2) A purchaser who, in good faith and without knowledge of any false statement therein, obtains a sworn statement from the seller stating the amount of gross revenue taxes, interest and penalties due to the department and tenders such statement to the department's tax enforcement division by certified mail or by personal service, shall be released from any liability for any tax, interest, or penalties in excess of the total amount stated on the seller's sworn statement unless, within fifteen (15) days of the department's receipt of the seller's statement, the department notifies the purchaser of the correct liability by mail to the return address provided. The seller's sworn statement shall also serve as authorization for the department to advise the purchaser of any service industry business gross revenue tax liability that the seller may have to the department.

(3) The amount of liability of the purchaser of a service industry business for the taxes and related interest and penalties levied herein shall not exceed the amount of the purchase money paid by the purchaser to the seller in good faith and for full and adequate consideration in money or money's worth. "Purchase money," as used in this subdivision, includes cash paid, purchase money notes given by purchaser to seller, the cancellation of the seller's indebtedness to the purchaser, the fair market value of property or other consideration given

by purchaser to seller; and shall not be increased or decreased by indebtedness of the seller either taken or assumed by the purchaser when a tax lien has not been filed.

67-4-2213. It is the duty of every service industry business required to make a report and pay any tax or related interest or penalty under this part, to keep and preserve suitable records of the gross revenue taxable under this part, to maintain such other books of account as may be necessary to determine the amount of tax due, and any other tax-related information that the commissioner may require. It is also the duty of every such service industry business to keep and preserve, until such time as the period for making an assessment has expired under Section 67-1-1501(b), all invoices and other records related to taxation under this part. All such books, invoices, and other records shall be open to examination at all reasonable hours to the commissioner or any authorized agents of the commissioner.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming law for purposes of registration, prescribing forms, and promulgating regulations, and shall become applicable for all other purposes on October 1, 2001, the public welfare requiring it.